

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VALTON VANOY BILLINGSLEY

Petitioner,

VS.

DOUGLAS DRETKE, Director
Texas Department of Criminal Justice,
Correctional Institutions Division

Respondent.

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NO. 3-05-CV-1502-L

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner Valton Vanoy Billingsley, appearing *pro se*, has filed a motion to dismiss his application for writ of habeas corpus. Fed. R. Civ. P. 41(a)(1) provides that "an action may be dismissed by the plaintiff . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs . . ." FED R. CIV. P. 41(a)(1). This case was filed on July 28, 2005. Respondent has not been served with process or entered an appearance. Therefore, petitioner should be permitted to dismiss his writ.

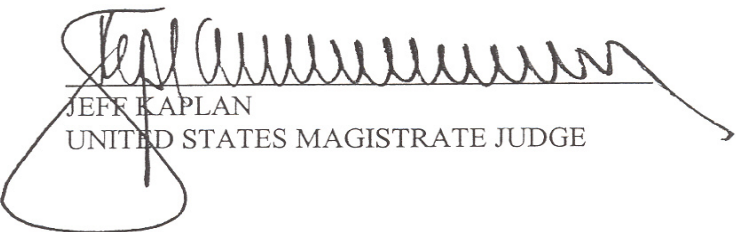
RECOMMENDATION

Petitioner's motion to dismiss should be granted and this action should be dismissed without prejudice.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal

conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: September 1, 2005.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE